On consideration of the trend of modern decisions to the effect that, where the state does not object, a corporation will not be prevented from carrying on its business details according to good business principles unless such is clearly ultra vires, and also giving some weight to the growing opinion among business men that the founding of such a pension fund is a good financial investment for a corporation, it would seem clear that the decision of the principal case is correct. H. S. K.

RECOVERY IN QUASI-CONTRACT FOR BENEFITS PROCURED BY FRAUDULENT MARRIAGE.—The plaintiff had gone through forms of marriage with the defendant's intestate, honestly believing she was marrying him, while he knew that he had a living wife and therefore could not marry. They lived together as man and wife until his death, and it was not until after such death that she learned that he had a prior wife still living. In a suit for money advanced and services rendered, she was given a verdict for both claims. *Held*, that the judgment on such verdict should be affirmed. *Sanders* v. *Ragan* (N. C. 1916), 90 S. E. 777.

No question was raised as to the money advanced, the advance presumably being regarded as evidence of a genuine contract of loan. The appeal was concerned only with the recovery for the services. It is apparent that the services were rendered in the mistaken belief that the status of the plaintiff imposed upon her a duty toward the defendant's intestate; and since, if her status had been what she believed it to be, she would have owed such services to her husband, her mistaken belief which induced her to render the services was a mistake of fact which affected not merely the policy of what she should do, but rather her legal duty as a wife. The plaintiff's case was made still stronger by the fact that her ignorance of her true status was the result of the husband's fraudulent misrepresentations. To so induce a person to enter into a void marriage was an actionable wrong for which the wrongdoer was liable in an action for fraud and deceit. However, that right of action in tort died with the tort-feasor; and after the tort-feasor's death, the plaintiff could recover, if at all, only in assumpsit for the value of the services rendered. Accordingly, the court deciding the principal case allowed recovery in assumpsit on the ground that the defendant's intestate had been unjustly enriched at the plaintiff's expense.

When money not justly due has been paid under a plain mistake of fact, which money would have been actually due if the facts had existed as believed, recovery has been generally allowed. *Stuart* v. *Sears*, 119 Mass. 143; *Lane* v. *Pere Marquette Boom Co.*, 62 Mich. 63, 28 N. W. 786; *Simms* v. *Vick*, 151 N. C. 78, 65 S. E. 621, 24 L. R. A. N. S. 517. And it seems, in the absence of adjudication on the question, that if the element of fraud were absent in the principal case, recovery should be allowed on such facts for services rendered, in the same way that recovery of money was allowed in the cases cited supra. But in the case under discussion, fraud is at the very basis of the mistake. The general rule is that when one by fraud induces another to pay him money not justly due, the person so wronged

may bring either an action in tort or contract, the former asking damages on the ground of deceit, the latter asking restitution of benefits unjustly obtained by means of deceit. *Minor* v. *Baldridge,* 123 Cal. 187, 55 Pac. 783; *Donovan* v. *Purtell,* 216 Ill. 629, 75 N. E. 334, 1 L. R. A. N. S. 176; *Johnson* v. *Seymour,* 79 Mich. 156, 44 N. W. 344. When the wrongdoer has by his fraud procured a benefit in the form of services, there would seem to be equal reason for permitting restitution as an alternative remedy for the tort, and this has been permitted in numerous cases; though, by reason of the fictitious forms of pleading in general assumpsit, some courts have been led to make an invidious distinction between the claim for money had and received and that for labor or for goods. WOODWARD, LAW OF QUASI-CONTRACTS, §§273-277-281.

Upon the precise problem involved in the principal case it may be stated that the authorities are plainly in conflict. WOODWARD, LAW OF QUASI-CONTRACTS, §§184, 282; KEENER, QUASI-CONTRACTS, 318. After a discussion of this conflict in decisions the court in the principal case concluded that services rendered in reliance upon the fraudulent misrepresentations of the defendant's intestate should be treated in the same way as money paid under any species of fraud, and accordingly allowed recovery in assumpsit as stated above. This view on the same state of facts is supported by both textwriters and authorities. WOODWARD, LAW OF QUASI-CONTRACTS, §§184, 282; KEENER, QUASI-CONTRACTS, 318; *Fox* v. *Dawson's Curator,* 8 Martin (La.) 94; *Higgins* v. *Breen,* 9 Mo. 493. Similarly, a slave has been allowed to recover for services rendered in the mistaken belief that he was not free, such mistake being the result of fraudulent misrepresentations made by his former master; *Kinney* v. *Cook,* 4 Ill. 232; *Hickam* v. *Hickam,* 46 Mo. App. 496; and a girl who worked as a member of the family was allowed to recover in *Boardman* v. *Ward,* 40 Minn. 399, 42 N. W. 202, 12 Am. St. Rep. 749.

However, it must be admitted that the opposite view is also supported by eminent authorities. In the case of fraudulent marriage, recovery for services rendered was denied in *Cooper* v. *Cooper,* 147 Mass. 370, 17 N. E. 892, 9 Am. St. Rep. 721; and in *Payne's Appeal,* 65 Conn. 397, 32 Atl. 948, 48 Am. St. Rep. 215, 33 L. R. A. 418; a slave was denied recovery in *Franklin* v. *Waters,* 8 Gill (Md.) 322; and a girl who was told that she was an adopted daughter was allowed no compensation in *Graham* v. *Stanton,* 77 Mass. 321, 58 N. E. 1023. The chief reasons for denying relief in the cases of *Cooper* v. *Cooper* and *Payne's Appeal* were "(1) that the tort of inducing one to enter into a void marriage is essentially a personal injury to which the benefit obtained by the wrongdoer is merely incidental; and (2) that the value of the benefits obtained by the defendant is only a single item of consequential damages which cannot be separated from the wrong itself and made the sole basis of an action by the person wronged." WOODWARD, LAW OF QUASI-CONTRACTS, §282. These reasons are best disposed of by the same writer who says: "In answer to the first, it is submitted that if a wrongdoer is benefited at his victim's expense, to any extent whatever, the relative insignificance of such benefit, as compared with the injury suf-

fered by his victim, affords no reason for denying to the latter the right to elect an action for restitution instead of an action for damages. As to the second, it may be pointed out that the plaintiff, in electing to sue for restitution, does not separate the consequential benefit to the defendant from the wrong committed by him. The very foundation of the action for restitution is the fraud of the defendant in inducing the plaintiff to enter into the void marriage; and the only essential difference between the action of assumpsit and that of deceit in such a case, is that in the former the plaintiff seeks to recover the value of the benefits resulting to the defendant, while in the latter he demands compensation for the damages resulting to himself."

It naturally follows that the value of all benefits conferred upon the plaintiff by the wrongdoer must be deducted from the value of the services rendered by the plaintiff, for the retention of a benefit is not unjust to the extent that such services have been paid for. The benefits conferred upon a plaintiff might be in some cases so great as to prevent any recovery for services. It should be noted in this connection that it is no more difficult for the jury to make the deduction when the action is in assumpsit than it is where the action is in tort for deceit. H. G. G.

AESTHETIC PURPOSE AS A JUSTIFICATION FOR EXERCISE OF POLICE POWER.—Whether or not aesthetic considerations justify the exercise of the police power is a question which has already engaged the minds of the courts, and which we venture to say will more frequently be involved in their opinions as time passes. The recent case of *Thomas Cusack Co.* v. *Chicago,* 37 Sup. Ct. 190, sustained the constitutionality of the following ordinance of the city of Chicago: "It shall be unlawful for any person, firm or corporation to erect or construct any billboard or signboard in any block or any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes without first obtaining the consent in writing of the owners or duly authorized agents of said owners owning a majority of the frontage of the property on both sides of the street in the block in which such billboard or signboard is to be erected, constructed, or located." The same decision had been reached by the Supreme Court of the State of Illinois, *Thomas Cusack Co.* v. *City of Chicago,* 267 Ill. 344, 108 N. E. 340, Ann. Cas. 1916 C 488. In that opinion, wherein the ordinance is upheld as a reasonable exercise of police power, the court is careful to distinguish the facts from those involved in *Haller Sign Works* v. *Physical Culture School,* 249 Ill. 436, 94 N. E. 920, 34 L. R. A. N. S. 998. The statute in the latter case was held to have no relation to the safety, health, morals or general welfare of the public but to have been passed solely from aesthetic considerations, and was therefore considered invalid.

The Federal Supreme Court in its decision does not find it necessary to discuss the effect that it would give a statute which had been passed out of regard for aesthetic purposes, but adopts the finding of the state court that "fires had been started in the accumulation of combustible material